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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116
RM-8535

**COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),¹ by its attorneys,
hereby submits its comments on the Further Notice of Proposed Rulemaking in the above-
captioned docket.² The *Further Notice* requests comment on the Commission's proposals
regarding cost recovery for long-term number portability.

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¹ PCIA is the international trade association representing the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² FCC 96-286 (July 2, 1996) (First Report and Order and Further Notice of Proposed Rulemaking). The report and order portion of the document shall be referred to as "*First R&O*," and the Further Notice of Proposed Rulemaking shall be referred to as "*Further Notice*" or "*FNPRM*."

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I. INTRODUCTION AND SUMMARY

In the *First R&O*, the Commission adopted rules and policies requiring local exchange carriers to provide both interim and long term number portability. The *First R&O* further requires that "all cellular, broadband PCS, and covered SMR providers³ have the capability of delivering calls from their networks to ported numbers anywhere in the country by December 31, 1998, and to offer service provider portability, including the ability to support roaming, throughout their networks by June 30, 1999."⁴ The Commission declined to impose long term number portability requirements on paging and other messaging services and on CMRS providers in Private Paging, Business Radio Services, Land Mobile Systems on 220-222 MHz, Public Coast Stations, Public Land Mobile Service, 800 MHz Air-Ground Radio-Telephone Service, Offshore Radio Service, Mobile Satellite Service, and Narrowband PCS Services.⁵ No CMRS carriers are required to provide interim number portability.⁶

As the Commission attempts to structure appropriate cost recovery mechanisms to support implementation of number portability, PCIA urges the Commission fairly to apply the requirement of new Section 251(e)(2) of the Communications Act of 1934, as amended, that "[t]he cost of establishing numbering administration arrangements and number portability

³ PCIA notes that it currently plans to seek reconsideration of the Commission's definition of the Commission's definition of "covered SMR providers" as set out in *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Dkt. No. 94-54, FCC 96-263 (July 12, 1996) (First Report and Order).

⁴ *First R&O*, ¶ 4.

⁵ *Id.*, ¶ 156 (citing 47 C.F.R. § 20.9).

⁶ *Id.*, ¶ 169.

shall be borne by all telecommunications carriers on a *competitively neutral basis* as determined by the Commission."⁷ In addition to the principles enunciated in the *Further Notice*, the Commission also should take into account the nature of participation by and benefit received by particular categories of carriers.

PCIA further urges the Commission to structure a cost recovery mechanism in which administrative structure and costs are as streamlined as possible. Collection of funds should be consistent on a nationwide basis and should be simplified to the greatest extent possible.

Finally, the cost recovery principles should be designed to promote efficiency and to allow carriers maximum flexibility about appropriate cost recovery steps, consistent with competitive realities.

II. THE COMMISSION'S COST RECOVERY MECHANISM SHOULD BE "COMPETITIVELY NEUTRAL"

As the *Further Notice* recognizes, new Section 251(e)(2) directs that "[t]he cost of establishing telecommunications numbering administration arrangement and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."⁸ The Commission requests comment on "the meaning of the statutory language 'all telecommunications carriers' as that term is used in section 251(e)(2)."⁹ In addition, the Commission queries whether it "has authority to exclude

⁷ 47 U.S.C. § 251(e)(2) (emphasis added).

⁸ 47 U.S.C. § 251(e)(2).

⁹ *Further Notice*, ¶ 209.

certain groups of telecommunications carriers from the cost recovery mechanisms for number portability, and, if so, which carriers should be excluded."¹⁰

The Commission recently set forth its interpretation of "telecommunications carrier" in CC Docket No. 96-98. Specifically, the Commission concluded that, "to the extent a carrier is engaged in providing for a fee domestic or international telecommunications, directly to the public or to such classes of users as to be effectively available directly to the public, the carrier falls within the definition of 'telecommunications carrier.'"¹¹ That interpretation clearly should also serve as the starting point for determining the funding of number portability.

PCIA believes that the Commission does in fact have the authority to exclude certain groups of telecommunications carriers from the cost recovery mechanisms for number portability, and that this authority arises from the limitation contained in Section 251(e)(2) that the funding obligation be shared on a "competitively neutral basis." PCIA agrees with the Commission's conclusion in the *First R&O* that this clause means that "the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace."¹²

PCIA further supports the Commission's tentative conclusion that the long term number portability cost recovery method should comply with the following principles:

¹⁰ *Id.*

¹¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, ¶ 992 (Aug. 8, 1996) (First Report and Order).

¹² *First R&O*, ¶ 131.

(1) [A] competitively neutral cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal return.¹³

The Commission's discussion of these principles in the context of cost recovery for interim portability makes clear that these principles are required by the statutory language and are equally applicable to long term number portability cost recovery policies.

In addition to these principles, PCIA believes that the Commission should take into account the extent to which particular categories of telecommunications carriers are obliged to participate in providing number portability. For example, as noted above, the Commission explicitly excluded paging and messaging and non-covered SMR licensees from having to provide long term number portability. In that event, it seems inconsistent with the policies reflected in Section 251(e)(2) and the Commission's general pricing policies to require paging and messaging and non-covered SMR licensees to have to contribute to the funding of number portability implementation.¹⁴

¹³ *Further Notice*, ¶ 210 (footnote omitted).

¹⁴ The same analysis should apply to funding of interim number portability costs as well. PCIA urges the Commission to make this policy explicit in order to provide necessary guidance to state commissions in addressing this issue. For example, the Connecticut Department of Public Utilities Commission recently ruled that the costs associated with the provision of interim number portability should be recovered from all telecommunications carriers, including CMRS providers. *Application of SNET for Approval To Offer Interconnection Services*, Docket No. 95-11-08, at 64 (July 17, 1996). The Connecticut DPUC determined that this outcome was required by this Commission's *First R&O*, even though CMRS providers are not required to participate in interim number portability provision. PCIA urges the Commission to clarify that, since CMRS providers are not

(continued...)

III. ADMINISTRATION OF THE COST RECOVERY MECHANISM SHOULD BE SIMPLIFIED AS MUCH AS POSSIBLE

The Commission poses several questions concerning the determination and collection of rates to cover the long term number portability costs as well as the administration of the funds. PCIA urges the Commission to take steps to ensure that the administration of the funds be simplified and consistent on a nationwide basis. Administrative overhead should be minimized to the extent possible, which will promote efficiency in operation as well reduce administrative costs and thus the amount of funds that must be collected from carriers.

To the extent there are multiple databases, including databases separately deployed by states that have opted out of the national database plan,¹⁵ PCIA agrees with the Commission that the pricing principles for such state-specific databases should be governed by the national pricing principles to be established by the Commission in this proceeding. The Commission has appropriately concluded that a national pricing principle "will help to maintain consistency between states, thereby improving the likelihood that competition will develop nationwide."¹⁶ In addition, the fund itself should be collected and disbursed on a centralized basis. A single pricing mechanism applied nationwide, combined with centralized

¹⁴(...continued)
required to participate in interim number portability, and thus will gain no benefit therefrom, they are not required to contribute to the cost recovery for interim number portability implementation.

¹⁵ See *Further Notice*, ¶ 211.

¹⁶ *Id.*

administration, will facilitate the compliance of individual carriers with their funding obligations as determined in this proceeding.

IV. COST RECOVERY MUST BE DESIGNED TO PROMOTE EFFICIENCY AND PREVENT DISCRIMINATORY FUNDING OBLIGATIONS

With respect to the costs of number portability facilities to be shared by all carriers, PCIA is in concurrence with the Commission that there appear to be three subcategories: (1) non-recurring costs; (2) recurring costs; and (3) costs for uploading, downloading, and querying number portability database information. The Commission should ensure that whatever mechanism it adopts to recover these costs does not create competitive disparities or inequitable funding obligations. For example, taking a fixed percentage of a carrier's net or gross revenues discriminates against low profit margin carriers. Basing fees on factors such as minutes of use may also discriminate against certain carriers as a result of carriers' specific network designs or customer calling patterns.

PCIA believes that the joint funding obligation applies only to the shared costs of implementing long term number portability. With respect to carrier-specific costs related to number portability, PCIA supports the option presented by the Commission of requiring individual carriers to bear their own costs of deploying number portability in their own networks.¹⁷ Adoption of the principle will promote efficiency by providing carriers with

¹⁷ *Further Notice*, ¶ 221.

incentives to deploy necessary network changes on a technically and economically rational basis.

Carriers should be permitted to determine how to recover the costs associated with such network upgrades.¹⁸ Thus, carriers should have the option to recover the costs through charges to their customers, and the carrier should be entitled to make its own assessment about how to impose such charges. This allows flexibility and may well promote competition among carriers. Prescribing a particular funding approach when the charge is passed through to a carrier's customer inappropriately involves the Commission in pricing decisions that should be left to individual carriers and to the marketplace. Similarly, the Commission should resist imposing requirements or specifications about the nature of the charges (*e.g.*, consistency among carriers and/or across geographic regions, nature of charge, whether charge is recurring¹⁹), since that would interfere with the independent operation of competitive forces when not needed to protect the rights of consumers of telecommunications services.

Finally, PCIA agrees with the Commission that "carrier-specific costs not directly related to number portability should be borne by individual carriers as network upgrades." All carriers will have such costs. Efficiency in implementing such changes will be promoted by imposing the costs on the carrier making such changes and not requiring the sharing of such costs.

¹⁸ See *id.*, ¶¶ 222-223.

¹⁹ See *id.*, ¶ 224.

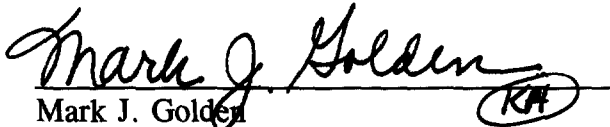

V. CONCLUSION

PCIA supports the efforts of the Commission to develop rational pricing principles for recovery of number portability costs. Incorporation of the policies set forth in these comments will promote achievement of the objectives set forth by this Commission and the Telecommunications Act of 1996.

Respectfully submitted,

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